

## **Department of Corrections Bills** **2007 Legislature**

*By Brenda Elias, DOC staff attorney*

**HB 83** – *Revise law on medical parole.* This bill was one of DOC's top priorities. This bill changes the standard for granting an inmate a medical parole. An inmate is eligible for medical parole if he or she either 1) has a medical condition requiring extensive medical attention, or 2) is likely to die within 6 months. The Board of Pardons and Parole also must find that the person does not pose a detriment to the public. Also, persons who are under a sentence of death or sentenced to life without parole are not eligible for medical parole.

**SB 50** – *Prohibit probation and parole officer sexual contact with probationer or parolee.* This bill prohibits sexual contact between a probation and parole officer and any person on community supervision. The bill operates by declaring that a person under supervision cannot give consent to have sexual contact with a probation and parole officer and therefore any such contact would subject the officer to prosecution. This is consistent with existing law making it a crime for a correctional officer to have sexual relations with an incarcerated individual. The bill also brings the department in line with the federal Prison Rape Elimination Act, which, despite the act's reference to "prison," does apply to community corrections.

**SB 146** – *Revise Juvenile Delinquency Intervention Act.* The Department of Corrections along with the Supreme Court administrator helped draft and requested SB 146. This act revises the Juvenile Delinquency Intervention Act by restricting the use of funds; reducing the department's duties; reducing the rules the department is responsible for writing; expanding the duties of the office of court administrator; adding that the Office of Court Administrator will write related policies; and removing certain costs from county responsibility. With this bill, youth placement funds remain appropriated to the Department Of Corrections, but the department has a primary accounting function with the funds.

### **Other Bills**

**SB 547** – *Laws relating to sex offenders* (Sen. Gary Perry)  
Enhanced sentencing

- If the victim is 12 years old or younger and offender is 18 years or older, mandatory sentence of 100 years for the following crimes:
  - Sexual intercourse without consent

- Incest
  - Prostitution
  - Promoting prostitution
  - Aggravated promoting of prostitution
  - Sexual abuse of children
- In sentencing under the above enhancement, the judge may not suspend the first 25 years of the offender's sentence and the offender is not eligible for parole during this time. Therefore, offenders must be incarcerated for a minimum of 25 years.
  - Offenders sentenced to 100 years and then released to the community will be on supervised on probation for the rest of their lives and must remain in a sex offender program for the duration.

### Treatment

- Treatment is mandatory for all sex offenders, not just offenders sentenced to the enhanced term of years.
- Sex offenders are not eligible for parole until they have completed sex offender treatment. This applies to all sex offenders.
- The legislation authorizes DOC to create a specialized in-patient sex offender treatment program. DOC anticipates placing low-level sex offenders (Level 1 offenders and some Level 2s) in the treatment program. Upon successful completion, the balance of the offender's sentence may be suspended and served on probation.

### Sexual offender registration

- Offenders must register within 3 days of moving to a new county to live. Previously, offenders had 10 days to register.
- Defines "transient" and requires them to report within 3 days of entering a new county, regardless of whether they intend to "live" there.
- Transients must report monthly to law enforcement and may be required to identify locations where they stayed in previous 30 days.
- Identifies the information law enforcement must collect from a person registering: name, aliases, Social Security number, employer, driver's license number, and a description of any motor vehicle owned and operated by registrant.
- Offenders who live in more than one county must register with both counties.
- Level 2 offenders must verify registration every 180 days. Previously it was yearly. Level 3 offenders still must verify every 90 days, and Level 1 offenders annually.
- Level 2 offenders must serve 25 years before they are eligible to petition the court for relief from the obligation to register. Previously, there was a 10-year requirement for Level 2 offenders.
- Expands the information about sex offenders that law enforcement and DOJ can release to the public.

### Juvenile offenders

- Youth age 16 or older may be prosecuted criminally, in district court, for the crime of sexual assault.
- Youths who are adjudicated delinquent for a sex offense now are required to register as sex offenders. Previously, youths only had to register if the judge affirmatively orders that requirement. Now youths must register by operation of law. On a case by case basis, a judge may exempt a youth from having to register if it's the offender's first sex offense and the judge finds registration is not necessary for the protection of the public and relief from registration is in the public's best interest.

**HB 435** – *Prohibit criminals from profiting from their crimes.* The Department of Corrections testified in favor of this bill. Rep. John Parker of Great Falls proposed this bill in response to news that convicted kidnapper and sexual offender Nathan Bar Jonah was selling his personal items for profit on the Internet. The bill requires anyone who contracts with a criminal for book, movie or other profit-making purposes to deposit the proceeds of the contract into an escrow fund for the benefit of any victim of the person's crime.

**SB 433** – *Termination of Deferred and Suspended Sentences.* This bill permits offenders serving deferred or suspended sentences to petition the district court for termination of those sentences. In order to terminate a suspended or deferred sentence, the court must find that termination is in the best interest of the defendant and society and will not present an unreasonable risk of danger to the victim. An offender serving a deferred sentence could petition the court for termination of the sentence after serving half of the sentence and has demonstrated compliance with conditions of supervision. An offender serving a suspended sentence can petition for termination after serving two-thirds of the suspended time and has been conditionally discharged from supervision. The Department of Corrections worked with Sen. Jesse Laslovich on this bill and requested changes from the bill's original draft.

**SB 447** – *Revise victims' rights laws.* This bill gives victims the right to receive, at no cost, one copy of all public documents in the court file relating to the offense and prosecution of the defendant. The right to receive free documents does not extend to trial transcripts, trial exhibits and documents in Youth Court Act proceedings. Trial transcripts and trial exhibits can be lengthy documents and providing them to victims could get expensive, so the exception was created. Additionally, this bill gives victims the right to have a victim's advocate present when interviewed about the offense. The department's crime victim liaison advised Sen. Gary Perry on this legislation.

**HB 452** – *Achievement credits for parolees.* In its original version, the department and the Board of Pardons and Parole had concerns about this bill. The department worked

with Rep. Deborah Kottel to make changes to this bill. The department ultimately supported the amended version of the bill. The bill is designed to provide an incentive for parolees to further their education or attend apprenticeship programs. If a parolee finishes a qualifying program, the person could apply to be released early from parole, provided they meet certain other criteria.

**HB 467** – *Revise medical-legal panel laws.* DOC strongly supported this bill. This bill appropriately exempts prisoner claims from the medical-legal panel process. Prisoner claims should be heard in federal district court and not as medical malpractice claims. Both the Montana Medical Association and the Montana Trial Lawyers Association supported this bill.

**HB 292** – *Revise local government leasing laws.* This bill permits persons or entities other than counties to operate detention centers, pursuant to a lease agreement. The bill authorizes county commissioners to lease county real and personal property to a person or entity for use as a detention center. The bill also permits a county or two or more local governments to enter into a lease-purchase agreement for the construction, furnishing, and purchasing of a detention center. The bill was sponsored by Rep. Wayne Stahl, who represents Valley County. This county has indicated that it intends to build a 132-bed detention center. The department monitored this bill, but did not appear at the hearings, as the bill deals exclusively with detention centers, facilities over which DOC has no authority to oversee or regulate.

**SB 119** – *Clarify exchange of youth court records information with youth detention facilities.* This bill authorizes the sharing of records relating to youth adjudication with short-term detention centers, youth care facilities, youth assessment centers and youth detention facilities upon placement of a youth within the facility.

**SB 62** – *Increase pay to advisory board members.* This bill increases the per diem for advisory board members from \$25 to \$50.